

Notice of Allowability

Application No.

09/839,762

Examiner

Nathan M. Nutter

Applicant(s)

LUCARELLI ET AL.

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 12 August 2005.
2. ☒ The allowed claim(s) is/are 1-23.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 18 July 2005.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance: No prior art has been found that either teaches or fairly suggests the production of "(a) powder coating composition comprising:

at least one powdered polymer; and

a metal oxide, wherein the metal oxide has been size-reduced to a mean agglomerate particle size of less than about 25 microns," as herein recited and claimed.

The Board of Patent Appeals and Interferences has held, that "(t)he examiner has not provided any support, either by fact and/or technical reasoning, for the statement that 'for the sake of argument' that only 2500 particles of the reference to Inoue et al (GB 2 311 527 A) adhere to form an agglomerate (as proposed in the Examiner's Answer, page 4). Nor has the examiner provided any support, by facts and/or technical reasoning, for the statement that there 'cannot be more than 2500 particles adhering together to form an agglomerate' (Answer, page 5). In contrast, appellants have submitted an attachment to the Brief to establish that AEROSIL® products, such as those exemplified by GB '527 (see page7, 11. 1-5), contain agglomerates of about 10 to 200 microns. The examiner has failed to discuss appellants' evidence (see the Answer in its entirety)."

A prima facie case of obviousness has, thus, not been established.

Upon reconsideration of the application, it was determined that a rejection of the claims under the judicially-created doctrine of obviousness-type double patenting over the claims of issued U.S. Patent No. 6,228,927, would be in order. The Examiner

Art Unit: 1711

contacted Michelle Lando to supply a timely filed Terminal Disclaimer to remove the need to re-open prosecution on the application, over this reference.

A timely-filed Terminal Disclaimer was received on 12 August 2005 and was entered, thus effectively overcoming the proposed rejection.

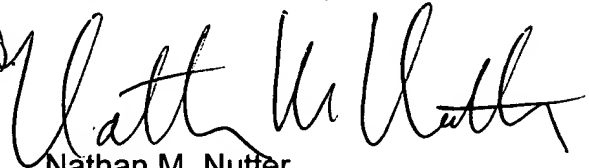
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1711

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Nathan M. Nutter', is written over the printed name.

Nathan M. Nutter
Primary Examiner
Art Unit 1711

nmn

24 August 2005